

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

PREMIER HOTEL DEVELOPMENT
GROUP d/b/a Hospitality
Consultants, The Carnegie
Hotel, Austin Spring Spa
& Salon, and Luigies
EID 62-1761567 and 52-2261913;
PREMIER INVESTMENT GROUP
d/b/a Premier Investments
EID 62-1721108; and
SAMUEL T. EASLEY
SS 415-23-3809,

Debtors.

DURKAN PATTERNED CARPET, INC.,
a Georgia Corporation,

Plaintiff,

vs.

PREMIER HOTEL DEVELOPMENT
GROUP, a Tennessee General
Partnership, and THE PUBLIC
BUILDING AUTHORITY OF THE
CITY OF JOHNSON CITY,
TENNESSEE,

Defendants.

Nos. 01-20922, 01-20923
and 01-20940
Chapter 11
Jointly Administered

Adv. Pro. No. 01-2022

M E M O R A N D U M

APPEARANCES :

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is presently before the court on cross motions for summary judgment filed by plaintiff Durkan Patterned Carpet, Inc. ("Durkan") and defendant Public Building Authority of the City of Johnson City, Tennessee ("PBA"). For the reasons addressed below, PBA's motion will be granted and Durkan's denied. Although this is a noncore proceeding, the parties have consented to the entry of final orders and judgments by this court. See 28 U.S.C. § 157(c)(2).

The gist of this lawsuit is that Durkan seeks to be paid for carpet it supplied in connection with the construction of the Carnegie Hotel in Washington County, Tennessee. According to its complaint which was first filed in Chancery Court for

Washington County, Tennessee on September 27, 2000, Durkan entered into a contract with Premier Hotel Development Group L.L.C. ("Premier LLC") to furnish carpet and related materials for the Carnegie Hotel and that although it fully complied with the contract by furnishing the carpet materials, the sum of \$63,755.55 remains owing under the contract. Prior to the commencement of this lawsuit, Durkan filed a notice of mechanic's and materialman's lien addressed to Carnegie Hotel and Premier LLC.

Durkan alleges in the complaint that at the time the contract was executed, Premier LLC owned the property upon which the Carnegie Hotel was located, but effective December 31, 1999, Premier LLC merged into Premier Hotel Development Group ("Premier"). By quitclaim deed dated March 23, 2000, Premier conveyed the Carnegie Hotel property to PBA, who by agreement dated that same day, leased the property back to Premier with a repurchase option of \$10. Also on March 23, 2000, Premier executed a deed of trust in favor of First Tennessee Bank on the hotel property in order to secure a loan in the principal amount of \$8,250,000. In its complaint, Durkan seeks a judgment for the balance owed to it based on breach of contract and/or unjust enrichment. Durkan also requests that an attachment issue and be levied on the Carnegie Hotel and that its judgment be

declared a lien superior to First Tennessee's deed of trust and Premier's leasehold interest.

Premier filed for chapter 11 relief on March 15, 2001 and Durkan's state court action was removed to this court by the debtor on April 16, 2001. In a memorandum opinion filed October 11, 2001, this court concluded as a matter of law that Durkan's materialman's lien did not take precedence over First Tennessee's deed of trust. Accordingly, by order entered that same day, the court granted First Tennessee's motion to dismiss concerning all claims made against it and First Tennessee Bank was accordingly dismissed from this action. By order entered November 30, 2001, Durkan was granted a judgment against Premier in the amount of \$63,755.55 plus prejudgment interest. This judgment along with Durkan's asserted lien on the Carnegie Hotel are addressed in Premier's plan of reorganization, confirmed on December 12, 2001, which plan provided for a sale of the hotel. As a result, the only unresolved issue in this action is Durkan's claim against PBA.

On May 15, 2002, PBA moved for summary judgment, asserting that there are no genuine issues as to any material fact and that it is entitled to judgment as a matter of law in its favor because it neither had a contract with Durkan nor was unjustly enriched by the carpet which Durkan supplied to the Carnegie

Hotel. In support of its motion, PBA submits a copy of the lease agreement between PBA and Premier and the affidavit of Robert D. Arnold, chairman of PBA and the individual who executed the lease agreement on behalf of PBA. Mr. Arnold states in his affidavit, *inter alia*, that:

The purpose of [the transaction with Premier] was to put the legal title of the Carnegie Hotel property in the name of the Public Building Authority of the City of Johnson City, a tax exempt entity, so that the property could be leased back to Premier Hotel Development Group for an in-lieu-of-tax payment as rent. As such, Premier was afforded stability and predictability by having its property held by a tax exempt entity not subject to changes in assessments or increases in tax rates.

....

The P.B.A. never involved itself in any aspect of Premier's business or its management, never received any proceeds or shared in any profits of Premier, and never made any decisions with regard to any improvements on the leased property....

....

Durkan Patterned Carpet, Inc. never had an agreement or any contact (until this lawsuit) with the Public Building Authority of the City of Johnson City, Tennessee, regarding carpet or any other matter.

Considering the purpose of the transaction involving the lease agreement ..., no benefits inured to the Public Building Authority as a result of any efforts by Durkan Patterned Carpet, Inc. on the property occupied by Premier Hotel Development Group. [Paragraph numbers omitted.]

Mr. Arnold also states in his affidavit that:

This lease transaction occurred in conjunction with the development by the P.B.A. of the Continuing Education Center project immediately adjacent and connected to the hotel property. That Continuing Education Center project, financed by public bonds, is now known as the Adelpia Conference Center. This lease transaction was not to gain a proprietary interest in the hotel property but was in furtherance of the conference center project. The board of directors of the P.B.A. deemed the hotel's development and this transaction with Premier as necessary in connection with the Adelpia Conference Center project.

As evidence of its lack of beneficial interest in the Carnegie Hotel, PBA explains that the lease agreement between it and Premier only obligated Premier to pay annual rent payments of \$1. Additional rent required under the lease was the combined amount Premier would have been required to pay annually in real property taxes to Washington County and Johnson City based on the 1999 tax year less \$15,000. In his affidavit, Mr. Arnold states that Premier never paid any of the required rent and PBA observes that the lease is no longer in effect due to Premier's bankruptcy filing and the subsequent sale of the Carnegie Hotel.

PBA also cites other lease provisions in support of its argument that it held bare legal title to the hotel and thus, derived no beneficial interest from Durkan's supply of carpet to the hotel. These provisions are that Premier's \$10 purchase option was absolute and exercisable even if Premier defaulted;

PBA's title to the hotel property was subordinate to First Tennessee's deed of trust, PBA had no ability to encumber the premises with any liens; PBA had no obligation with respect to the premises as all utilities, repair, maintenance, and improvements of the premises were the responsibility of Premier; Premier could alter, demolish, and reconstruct all improvements in its sole discretion and at its sole cost; if condemnation occurred, Premier would have received the entire award; and all insurance proceeds would be Premier's if damages to the hotel were sustained.

In response to PBA's motion, Durkan filed its own motion for summary judgment on May 29, 2002, wherein it similarly asserts that there is no genuine issue of material fact and it is entitled to judgment in its favor. Durkan does not contradict the evidence proffered by PBA or deny that it had no contract with PBA. Instead, Durkan asserts that PBA is liable to it under a theory of quantum meruit or unjust enrichment, contending that "even a cursory reading of the Lease Agreement ... makes clear that the Public Building Authority stood to benefit greatly from its arrangement with [Premier]." Durkan observes that PBA owned the hotel and any alterations or improvements to the property and Premier was required by the terms of the lease to maintain comprehensive general public

liability insurance coverage of not less than \$1 million per occurrence and \$2 million aggregate to protect both Premier and PBA. Durkan also asserted that PBA would benefit from the established rent in lieu of property taxes and from any sale, use or hotel-motel occupancy taxes paid by Premier. Durkan concludes in its memorandum of law that:

[W]hen the City entered into the Lease in question, it necessarily immersed itself in private enterprise, for better or worse....

... [T]he Hotel and, thus, the City received the benefit of Durkan's product, yet Durkan has not been paid....

... [H]aving inserted itself into the stream of private commerce and received a tangible benefit thereby, the Public Building Authority should not now be heard to say that it had "bare legal title" and only a "de minimis" ownership interest."

Neither party has cited to the court, and this court has been unable to locate, any reported decisions where the liability of a public building authority like PBA has been considered under circumstances such as those in the present case. Instead, both parties cite the Tennessee decision of *Swafford v. Harris*, 967 S.W.2d 319, 324 (Tenn. 1998), wherein the Tennessee Supreme Court set forth the elements which must be established to recover in quantum meruit for unjust enrichment. As stated therein:

A quantum meruit action is an equitable substitute

for a contract claim pursuant to which a party may recover the reasonable value of goods and services provided to another if the following circumstances are shown:

1. There is no existing, enforceable contract between the parties covering the same subject matter;
2. The party seeking recovery proves that it provided valuable goods or services;
3. The party to be charged received the goods or services;
4. The circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated; and
5. The circumstances demonstrate that it would be unjust for a party to retain the goods or services without payment.

Id. at 324.

The dispute between the parties centers around the last three factors. PBA denies that it received the goods from Durkan or that the circumstances demonstrate it would be inequitable for PBA to not pay Durkan for the carpet. Durkan, of course, argues to the contrary as noted above.

Based on the undisputed facts and the court's own review of the lease agreement, this court is thoroughly convinced that PBA had in fact only bare legal title to the Carnegie Hotel and as such received no benefit from the carpet provided by Durkan to the hotel. PBA was conveyed the hotel from Premier without the payment of any consideration and immediately thereafter, on the same day and in the same transaction, PBA granted Premier an absolute option to repurchase for \$10. The lease expressly

provides that "in no event can Landlord cancel Tenant's option to purchase the Premises for the sum stated hereinbelow." The lease further provides that even if Premier fails to exercise the option during the ten-year lease term, "the Tenant shall be conclusively presumed to have exercised this option as of the last day of the Term hereof."

As PBA points out, Premier had possession of the hotel, along with all of the other attributes of ownership including the ability to "alter, reconstruct and demolish any and all improvements located on the Premises and to make such additions thereto, as Tenant may elect, and at its sole discretion at its sole cost." Durkan cites as evidence of PBA's ownership interest that any such alterations or improvements by Premier would be owned by PBA rather than Premier, but the lease specifies that the purpose of this ownership is "to preserve the tax exempt status for ad valorem tax purposes." In the court's view, any element of ownership that PBA would derive from improvements added by Premier is offset by the fact that Premier was entitled to alter or even "demolish any and all improvements located on the Premises." PBA correctly notes that under the lease, Premier would receive "the entire proceeds of [any condemnation award] without participation by Landlord" and that similarly, "[a]ll proceeds from insurance payable for any damage

or destruction of the improvements or the Premises shall be the sole and exclusive property of Tenant, without participation or interest by Landlord therein." Durkan's reference in its brief to a requirement in the lease that Premier purchase insurance to protect PBA and Premier pertains to liability coverage rather than property damage and as such, conveys no equitable or beneficial interest in the hotel to Premier.

When all is said and done, the only benefits obtained by PBA from legal title to the Carnegie Hotel were the rent and "the public interest ... advanced by the Johnson City Public Building Authority becoming involved in the hotel." Neither of these benefits, alone or in conjunction, are of sufficient weight to establish PBA as the beneficial owner of the hotel and its improvements, such as the carpet provided by Durkan. The rental payments required under the lease were simply the property taxes which Premier would have otherwise paid as owner, less \$15,000 annually. The bottom line is that except for the fact that PBA had actual legal title to the hotel, it received no greater benefit from this ownership than it would receive from any other business located in Johnson City, *i.e.*, taxes and the desired presence of the business in the community in order to meet and satisfy the needs of the public. This societal interest does not subject PBA to liability for goods or services provided the

Carnegie Hotel, just as it would not subject PBA to liability for goods and services provided to any other business within Johnson City. Accordingly, the doctrine of quantum meruit does not provide Durkan a means of obtaining payment from PBA for the carpet supplied to the Carnegie Hotel.

In light of the foregoing, an order will be entered granting PBA's motion for summary judgment and denying Durkan's motion for summary judgment.

FILED: June 19, 2002

BY THE COURT

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE